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the executive, who must apply the law, this superiority extends no farther. It is a concession necessary for the consistency of government. The judicial is really the weakest of the three departments, and depends upon the executive for its backbone. Deprived of this source of strength the court is powerless against any one, not to speak of the executive itself. Any disregard of a mandamus by the chief executive the court could not punish, and the result of issuing the mandamus could be only to bring the court into contempt. *The State* v. *The Governor*, 25 N. J. L. 331. This reason applies as fully to the governor of a State, within his own sphere, as to the President of the United States. Each in his way is supreme. It is idle, moreover, to draw distinctions between ministerial and discretionary acts. Every act involves a certain exercise of judgment, and the distinction can be only one of degree. The chief executive of any State in the matters intrusted to him is his own judge, and claims upon him for the performance of his official duty are beyond the cognizance of the courts of his State. If he ignores the law, impeachment, not mandamus, is the remedy.

THE RIGHTS OF UNBORN CHILDREN. — The question whether an unborn child has civil rights, — whether an infant may recover damages for injuries received before birth, — is a rare one in the law. It was squarely raised, and decided against the child, in *Dietrich* v. *Northampton*, 138 Mass. 14, and discussed in *Walker* v. *Gt. Northern Ry. Co.*, 28 L. R. (Ireland), 69. It has now been brought up again in *Allaire* v. *St. Luke's Hospital*, Appellate Court, First District of Illinois, 30 Chic. Leg. News, 333. There the plaintiff's mother was received by the defendants, a lying-in-hospital, for treatment during child-birth. The defendant's neglect, — which was clearly tortious as to the mother, — was the direct cause of an injury to the plaintiff while still in the womb. It is hard to imagine a case in which the facts would be more favorable to the child and more likely to prejudice a court, but it was held that the child could not recover for his injury.

The position of a child *en ventre sa mere* in the other departments of the law gives little sanction to a proposition for granting them civil rights. They are considered in the law of property, but their rights do not come into existence until birth and then relate back. This fiction of relation does not involve any idea of a child *en ventre sa mere* as a separate entity, and at best is a special equitable provision. The criminal law is harder to understand. It is murder or manslaughter if one injures a child *en ventre sa mere*, and that child be born alive, and later dies of the injury. 3 Inst. 50. *Rex* v. *Senior*, 1 Moo. C. C. 346. It is argued that every murder must of necessity be a tort, and that therefore there has been a tort against the child in the womb. The answer to this contention probably is that the criminal law has made an error, though a very natural one, in placing this crime against the child in the category of murder; that the fundamental conception of homicide is the application of some force to a human being, a member of society; that this crime properly belongs in the category with the offence of procuring an abortion. The cases that have called the crime murder or manslaughter have stated no reasons, and the suspicious principle clearly forms no sound basis for analogy.

And not only would it be without precedent in law to allow the child to recover damages for an injury sustained before birth, but it would create

an anomalous right. If the child has a right of action it must arise at the time of the injury, but at that time it is uncertain whether the child will be born alive, so that a right of action is created which is contingent on a subsequent irrelevant fact. Strong reasons of public policy too are against allowing this new right of action, — infinitely difficult questions of fact would come before juries, and the courts would be filled with cases brought in bad faith.

THE PAROL EVIDENCE RULE APPLIED TO WILLS. — An interesting case regarding the interpretaiion of a will has recently been before the Supreme Court of Pennsylvania. *In re Root's Estate*, 40 Atl. Rep. 818. The will in question gave "unto my nephew, William Root, the sum of $1,000." The testator had a true nephew, William Root. His wife also had a nephew of the same name. To explain this will, evidence was offered in the Orphan's Court of the surrounding circumstances and the declarations of the testator tending to show that the wife's nephew was intended to take the legacy. The Orphan's Court admitted the evidence, and decided in favor of the wife's nephew. The Supreme Court, however, reversed this decision on the ground that when one person exactly meets the description in the will it is error to admit evidence of any kind to show that another person not exactly meeting the description was intended.

Half a century ago this decision would have met with general approval; but since that time there has been a steady growth of opinion that the rule here laid down is too narrow, and that whatever may be the case as regards direct declarations of intention, at least the courts may look fully into all other extrinsic circumstances. An instance of this growth appears in *Abbot* v. *Middleton*, 7 H. L. C. 68, where Lord St. Leonards said regarding the construction of a will, "You are, by the settled rule of law, at liberty to place yourself in the same situation in which the testator himself stood." In a subsequent case, Lord Cairns expressed himself to the same effect. *Charter* v. *Charter*, L. R. 7 H. L. 364. *Grant* v. *Grant*, L. R. 5 C. P. 727, was a case exactly parallel to the Pennsylvania case. Evidence was there received to show that the wife's nephew was meant, and Lord Blackburn distinctly repudiated the doctrine now urged by the Pennsylvania Court. To turn to American authorities, the words of the will considered in *Patch* v. *White*, 117 U. S. 210, exactly described an existing lot of land; yet when it appeared that this lot was not owned by the testator, the court righted the mistake by the aid of parol evidence. In England, then, and in the Supreme Court of the United States the strict rule laid down by the principal case is no longer adhered to.

On principle, the Pennsylvania position is hard to support. The aim of the law of construction is to give effect as nearly as possible to the intention of the testator. This aim is measured on one side by a rule of evidence established by time, that the direct declarations of the testator must not be regarded in the search for his meaning. On the other side, it is limited by the Statute of Frauds, which requires that this meaning when found be expressed in writing. Within these bounds no rule is established by precedent which places further restraints upon the interpreter; and in reason there seems to be no need for such a rule. Written words are but the symbols of the writer's meaning, and at best imperfect symbols. The law requires not a perfect but only a sufficient expression, and this there may be although the words are not used in their strict